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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/314,927	05/20/1999	TAKASHI KOBAYASHI	35.C13533	5816
5514	7590	04/20/2004	EXAMINER	
FITZPATRICK CELLA HARPER & SCINTO 30 ROCKEFELLER PLAZA NEW YORK, NY 10112			ODLAND, DAVID E	
			ART UNIT	PAPER NUMBER
			2662	
DATE MAILED: 04/20/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/314,927	KOBAYASHI ET AL.
	Examiner	Art Unit
	David Odland	2662

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 26 March 2004.  
 2a) This action is FINAL.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1,4-7,10,13-15,17 and 30-39 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1,4-7,10,13-15,17 and 30-39 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
     1. Certified copies of the priority documents have been received.  
     2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
     3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

### ***Response to Amendment***

1. The following is a response to the amendments filed on 03/26/2004.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1,4,5,10,18,30,31,34,38 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cook et al. (USPN 5,504,757), hereafter referred to as Cook, in view of EP 0697778 to Keshav et al., hereafter referred to as Keshav.

Referring to claims 1 and 18, Cook discloses a communication apparatus (a communication apparatus (see figure 1B)) comprising:

a) a communication unit having different transfer rates (a serial bus of the apparatus is capable of operating at multiple speeds (see figure 1B and abstract)) and adapted to transmit a predetermined packet to destinations using at least one of the different transfer rates (the method transmits packets to nodes using one of at least three speeds (see column 1 lines 42 through 57 and abstract)); and

b) a control unit adapted to determine a maximum transfer rate between the apparatus and the destinations (the maximum rate between the nodes is determined (see column 7 line 34 through column 8 line 50 and figure 3)).

Cook does not disclose that the apparatus receives responses from all the destinations or that the determination is made based on those responses. However, Keshav discloses a transmission rate adjustment system wherein a target rate is adjusted base on the acknowledgements received from all the destination nodes (see column 7 lines 34-43, column 9 line 55 through column 10 line 1, column 1 lines 12 and 13, abstract and claims 1-3)). It would have been obvious to one skilled in the art at the time of the invention to implement this feature in the Cook system because doing so would allow the system to verify which nodes are available (by-way-of the acknowledgements) before transmission takes place, thus making Cook more reliable. Furthermore, taking into account the acknowledgements from all destinations will make sure that the maximum speed is determined for communications with all the nodes. Note, Keshav discloses in column 9 line 55 through column 10 line 1 that for every data packet probe the source transmits there must be a corresponding acknowledgment received and also discloses in column 1 lines 12 and 13 that the processing system network, which is the network used to calculate the optimal rate, may consist of only two nodes (i.e. a source and a destination). Therefore, when the source receives the acknowledgement from the destination, in the two node network configuration, this can be considered a receiving ‘responses transmitted from all of the destination nodes’ as recited in the claim (i.e. the total number of destination nodes is one and the source receives the acknowledgment from that node to optimize the data rate).

Referring to claims 4 and 30, Cook discloses the system discussed above. Cook does not disclose that if the response is absent, retransmitting the packet at the previous rate. However, Keshav discloses of a communication unit that retransmits a predetermined packet at a transfer rate lower than the previous transfer rate, if at least one response is absent (an acknowledgment

is not received the packet is retransmitted at a decreased set point rate (see column 8 lines 1-22) (see column 10)). It would have been obvious to one skilled in the art at the time of the invention to implement this feature into the Cook system because if the acknowledgment is not received than that would indicate that there are problems with the transmission to the destination such as the destination being congested or unavailable. Therefore, retransmitting the packet a lesser rate will help prevent further congestion of the destination node or any intervening nodes along the path to the destination, thereby making Cook more reliable.

Referring to claims 5 and 31, Cook discloses the system discussed above. Furthermore, Cook discloses that the communication unit transmits data to the destinations at the maximum transfer rate after discriminating the maximum transfer rate (when the maximum rate is determined, that rate is used to transmit the data (see column 7 lines 24-50)).

Referring to claims 10 and 34, Cook discloses the system discussed above. Furthermore, Cook discloses that the communication unit conforms to an IEEE 1394 standard (the apparatus uses the IEEE 1394 standard (see abstract)).

Referring to claims 38 and 39, Cook discloses the system discussed above. Furthermore, Cook discloses that the communications unit has an isochronous transfer mode and an asynchronous transfer mode (the apparatus operating in both the asynchronous transfer mode and isochronous transfer mode (see abstract)), and is adapted to transmit the predetermined packet to all of the destinations using the asynchronous transfer mode (the apparatus transfers packets using the asynchronous transfer mode (see column 1 lines 42-57 and abstract)).

4. Claims 6 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cook in view of Keshav and further in view of Pflaumer (USPN 4,884,266), hereafter referred to as Pflaumer.

Referring to claims 6 and 32, Cook discloses the system discussed above. Furthermore, Cook discloses that the communication unit packetizes data into at least one packet (the apparatus communicates using data packets (see abstract)). Cook does not disclose that the system broadcasts each packet to the destinations. However, Pflaumer discloses a system wherein data packets are broadcast to destination nodes (see column 6)). Since the packets are broadcast, there is no need for determining which of the destination nodes is to receive the packet (i.e. they will all receive the packet) and therefore there is less processing time needed. It would have been obvious to one skilled in the art at the time of the invention to implement this feature in Cook because doing so would allow Cook to operate faster.

5. Claims 7 and 33 rejected under 35 U.S.C. 103(a) as being unpatentable over Cook in view of Keshav and further in view of Sheller et al. (USPN 5,010,553), hereafter referred to as Sheller.

Referring to claims 7 and 33, Cook discloses the system discussed above. Cook does not disclose that the maximum rate is used to determine the amount of data in the packets, which can vary based on the maximum rate. However, Sheller discloses a system wherein the size of variable size packets is determined based on a data rate (see column 3)). It would have been obvious to one skilled in the art at the time of the invention to have the packet size vary depending on the determined maximum transfer rate since higher rates will allow bigger packets

to be transmitted and lower rates will allow only smaller packets to be transmitted. Therefore, adjusting the packet size according to the transfer rate will make the system of Cook operate more efficiently and adaptive to the maximum speed it determines.

6. Claims 13, 14, 35 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cook in view of Keshav and further in view of Terada et al. (USPN 6,167,046), hereafter referred to as Terada.

Referring to claims 13, 14, 35 and 36 Cook discloses the system discussed above. Cook does not disclose that the predetermined packet includes a command that inquires of an ability of the destinations or information about an ability of the apparatus. However, Terada discloses a communication system wherein ability inquiries, in the form of packets, are made and stored between the nodes of the network (see column 3 lines 10-16)). It would have been obvious to one skilled in the art at the time of the invention to include such information in messages communicated between the source and destination nodes of Cook, for many reasons. One such reason would be that knowing each other's abilities would allow more versatile communication to take place. Namely, knowing that each can properly receive and process real-time data will allow such data to be communicated between the source and the destination. Another reason would be to determine if the source and destination could perform certain types of error correction. All of which would make the system of Cook more robust and reliable.

7. Claims 15 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cook, in view of Watanabe et al. (USPN 6,246,665), hereafter referred to as Watanabe.

Referring to claims 15 and 37, Cook discloses the system discussed above. Cook does not disclose that the predetermined packet includes a connection ID that indicates a logical connection relationship between the apparatus and the destinations. However, Watanabe discloses a system wherein logical connection IDs are used (see figures 33 and 34)). It would have been obvious to one skilled in the art at the time of the invention to include logical connection ID's in the system of Cook, because doing so would allow the destination to know how and where to locate the source (and vice versa) and thus properly send the packets back and forth between them, thereby making Cook more reliable.

***Response to Arguments***

8. Applicant's arguments filed 03/26/2004 have been fully considered but they are not persuasive.

On page 10 last paragraph through page 11 paragraph 1, the Applicant contends that neither Cook or Keshav disclose determining the maximum transfer rate between the apparatus and 'all' destinations to which a predetermined packet is transmitted. The Examiner respectfully disagrees. Keshav discloses in column 9 line 55 through column 10 line 1 that for every data packet probe the source transmits there must be a corresponding acknowledgment received and also discloses in column 1 lines 12 and 13 that the processing system network, which is the network used to calculate the optimal rate, may consist of only two nodes (i.e. a source and a destination). Therefore, when the source receives the acknowledgement from the destination, in the two node network configuration, this can be considered a receiving 'responses transmitted from all of the destination nodes' as recited in the claim (i.e. the total number of destination

nodes is one and the source receives the acknowledgment from that node to optimize the data rate). Therefore, Keshav does indeed disclose receiving responses from 'all' destinations.

***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Odland, who can be reached at (703) 305-3231 on Monday – Friday during the hours of 8am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hassan Kizou, can be reached at (703) 305-4744. The fax number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist, who can be reached at (703) 305-4750.

deo

April 18, 2004



JOHN PEZZLO  
PRIMARY EXAMINER